

Hearing Date: December 15, 2010  
Objections Deadline: December 8, 2010

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No. 08-13555 JMP  
LEHMAN BROTHERS' HOLDING, Chapter 11  
INC., a Delaware Corporation [jointly administered]  
Debtor

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PRUDENCE  
WALTZ'S MOTION PURSUANT TO SECTIONS 362(d)(2)(A) AND 554(b) OF THE  
BANKRUPTCY CODE REQUESTING RELIEF FROM STAY AND THE ENTRY  
OF AN ORDER DIRECTING DEBTOR IN POSSESSION AND ITS AFFILIATES  
TO ABANDON CLAIMS AGAINST THE REAL PROPERTY THAT IS THE  
SUBJECT MATTER OF THAT CERTAIN ACTION PENDING IN THE SUPERIOR  
COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF  
LOS ANGELES [ACTION BC 374163]**

**INTRODUCTION**

As a result of the recordation of a series of fraudulently created deeds [in particular Exhibits "M" and "S"] in the official records of Los Angeles County, California real party in interest PRUDENCE WALTZ'S [hereinafter referred to as "WALTZ"] title to the real property located at 844 through 846 West 57<sup>th</sup> Street, Los Angeles [hereinafter "THE SUBJECT PROPERTY"] has been and is clouded by a trustee's deed [Exhibit "L"] which purports to have transferred title to AURORA LOAN SERVICES, LLC [an affiliate of LEHMAN BROTHERS' HOLDING, INC. (the DEBTOR in this case which is hereinafter referred to as "DEBTOR") which is hereinafter referred to as "AURORA"] based upon a deed of trust allegedly executed by a trustor identified as "JANELLE BAIRD" [hereinafter referred to as "BAIRD"]].

In order to regain title and possession of THE SUBJECT PROPERTY WALTZ filed THE FOURTH AMENDED COMPLAINT [Exhibit “A” hereinafter referred to as “THE PENDING STATE COURT ACTION”] in THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES MOVING PARTY PLAINTIFF PRUDENCE WALTZ [hereinafter referred to as “THE CALIFORNIA COURT”] is seeking to.

[H]ave possession restored to her pursuant to Civil Code § 1712 by whoever is currently in possession and claiming ownership and any other possessory interest therein.

Although DEBTOR LEHMAN BROTHERS HOLDING, INC. [hereinafter referred to as “DEBTOR IN THIS CASE”] has not been named, and is not a party to THE PENDING STATE COURT ACTION, on the morning of October 26, 2010 [as trial was scheduled to commence] counsel representing himself as counsel for DEBTOR IN THIS CASE appeared and invoked the stay created under Bankruptcy Code § 362(a) as a result of the pendency of this case [see BRIEF RE: STAY OF PROCEEDINGS FILING BY INTERESTED PARTY LEHMAN BROTHERS HOLDING INC. a copy of which is filed herein as Exhibit “E”].

Based upon the undisputed fact that AURORA and THE DEBTOR IN THIS CASE’S claimed interest in THE SUBJECT PROPERTY is based upon an instrument which bears the forged signature of a person who has testified that she neither signed the instrument, authorized anyone to sign it on her behalf or had an interest in THE SUBJECT PROPERTY [see deposition filed herein as Exhibits “N”, “O” and “P” ] WALTZ is entitled to both relief from stay under section 362(d)(2)(A) of the Bankruptcy Code [11 U.S.C. § 362(d)(2)(A)] and an order under section 554(b) of the Bankruptcy Code [11 U.S.C. § 554(b)] directing the abandonment of all claims against THE SUBJECT PROPERTY in THE PENDING STATE COURT ACTION.

See: *Bernhard v. Wall* [1921] 184 Cal. 612 , 625; *Trout v. Taylor* [1934] 220 Cal. 652, 656; *Gioscio v. Lautenschlager* [1937] 23 Cal. App. 2d 616, 619-620; *Erickson v. Bohne* [1955], 130 Cal. App.2d. 553 at 555-556; *Greenwald v. United States* [1963] 223 Cal.App. 2d 434, 438-440 ; *Wutzke v. Bill Reid Painting Services, Inc.* [1984] 151 Cal.App.3d 36, 43; *Murray v. Murray* [1994] 26 Cal. App. 4th 1062, 1068 ; *Chopra v. Metrocities Mortg. LLC*, 2010 N.Y. Misc. LEXIS 4778, 2010 NY Slip Op 51711U (N.Y. Sup. Ct. Sept. 30, 2010); *First Natl. Bank of Nev. v. Williams*, 74 A.D.3d 740, 904 N.Y.S.2d 707 [2010]; *Carter v. United States* [N.Dist of Cal. 1981] 1981 U.S. Dist. LEXIS 17439, 1981 WL 1953

**WALTZ IS ENTITLED TO A DECLARATION UNDER 28 U.S.C. § 2201  
DECLARING THAT THE AUTOMATIC STAY WHICH RESULTED FROM  
THE FILING OF THIS CASE BY LEHMAN BROTHERS' HOLDING DOES  
NOT STAY PROCEEDINGS BROUGHT IN THE COURTS OF CALIFORNIA  
AGAINST ITS AFFILIATE AURORA LOAN SERVICES, LLC**

The automatic stay under section 362(a) of Title 11 of the United States Code  
[“The Bankruptcy Code”] does not affect the jurisdiction of the State Courts of  
California over WALTZ’S claims relating to her recovery of THE SUBJECT  
PROPERTY from either AURORA or any other entity related to THE DEBTOR IN  
THIS CASE who is not designated as a debtor in this Case.

see: *Ingersoll-Rand Financial Corporation v. Miller Mining Co.*, supra;  
*Wedgeworth v. Fibreboard Corp.* (5th Cir. 1983) 706 F.2d 541, 544; *Teachers  
Ins. & Annuity Ass'n. v. Butler* supra; *Kreisler v. Goldberg* (4<sup>th</sup> Cir. 2007) 478  
F.3d. 209, 213; *Barnett v. Lewis* (1985) 170 Cal.App.3d 1079, 1088; 3  
Collier on Bankruptcy § 362.03(3)(d) (16th Edition Lexis-Nexus 2010); 2  
March & Ahart CALIFORNIA PRACTICE GUIDE BANKRUPTCY 8(I)-8  
Scope of Automatic Stay ¶ 8:100 [The Rutter Group 2009]

**NEITHER DEBTOR, AURORA OR THEIR AFFILIATES HAVE  
EVER HAD GOOD TITLE TO THE SUBJECT PROPERTY**

Bankruptcy Code § 362(d) provides two grounds under which relief from the  
automatic stay may be granted. The present motion is based on the second which is that  
neither THE DEBTOR IN THIS CASE or any of its subsidiaries or affiliated entities has any  
equity in THE SUBJECT PROPERTY and is therefore it is not only unnecessary for a  
reorganization in this case, it is not available because neither the debtor or its affiliated  
entities have ever had a valid interest in the property.

See: Bankruptcy Code § 362(d)(2)(A) [11 U.S.C. § 362(d)(2)].

The jurisdiction given to this Court under section 362(d)(2) of The Bankruptcy Code  
includes not only the jurisdiction to grant relief from the valid operation of the stay in  
connection with proceedings brought against a debtor , but the jurisdiction to annul the stay  
retroactively in appropriate circumstances, including cases in which the debtor’s estate never  
had an interest in the property which is the subject of a moving party’s claims.

See: *Eastern Refractories Co. Inc. v. Forty Eight Insulations Inc.*, 157 F.3d  
169, 172 [2<sup>nd</sup> Cir. 1998]

In the present case AURORA'S claims in THE PENDING STATE ACTION [and whatever claims DEBTOR IN THIS CASE may make] are based upon a trustee's deed [Exhibit "L"] which was issued following a trustee's sale conducted pursuant to a power of sale contained in a deed of trust [Exhibit "M"] executed by an unknown person who there is no evidence had any interest in THE SUBJECT PROPERTY in connection with a loan made by another affiliated entity [BNC MORTGAGE].

However, A trustee's deed does not grant a purchaser [AURORA] at a trustee sale [a private foreclosure sale which is the customary means of completing a foreclosure in California] any better right or title than the trustors [or mortgagee] had when they executed the deed of trust [which is the customary instrument used in place of a mortgage in California].

See: *Brown v. Copp* [1951]105 Cal. App. 2d 1, 6

As the Court held in *Saterstrom v. Glick Bros. Sash etc. Co.* [1931] 118 Cal.App. 379, 383:

The deed of trust [mortgage] being void . . . the sale and all proceedings under the deed of trust [mortgage] would likewise be wholly ineffective and void.

The controlling law in California is consistent with parallel holdings of the Courts of New York which hold in similar cases that "a deed based on forgery or obtained by false pretenses is void ab initio, and a mortgage based on such a deed is likewise invalid"

cf: *Wutzke v. Bill Reid Painting Services, Inc.* and *Chopra v. Metrocities Mortgage LLC* supra and *First Natl. Bank of Nev. v. Williams* supra

Perhaps the most critical fact which defeats the applicability of the stay created under Bankruptcy Code § 362(a) being an impediment to THE PENDING STATE COURT ACTION is the fact that neither DEBTOR IN THIS CASE, AURORA or any of their affiliates have ever had good title to THE SUBJECT PROPERTY. That is because the conveyance which is the source of their claims to the property was not executed by either a person who had an interest in the property, or a person with authority to act on behalf of a person with an interest in the property [see deposition Excerpts copies of which are attached and filed herein as Exhibit "M", "N", "O" and "R" and declaration Exhibit "Q"] .

The testimony set forth in the excerpts from the depositions taken in THE STATE COURT ACTION are sufficient to meet WALTZ'S burden under Bankruptcy Code § 362(g) and entitle her to the retroactive relief requested in this motion, in the absence of admissible evidence contradicting that testimony.

However, no one has challenged, and there appears to be no indication that there is any evidence to challenge BAIRD'S sworn testimony [Exhibit "N"] that the signature on the deed of trust which was the basis for the trustee's sale which is the source of the trustee's deed [Exhibit "K"] which AURORA and THE DEBTOR IN THIS CASE'S affiliated entities base their claims to THE SUBJECT PROPERTY on was in fact a forgery.

cf: *Crispino v Greenpoint Mortgage Corp.*, supra

Equally significant is the lack of competent evidence in THE PENDING STATE COURT ACTION of who the person who placed JANELLE BAIRD'S signature on the deed of trust was.

cf *Greenwald v. United States* [1963] 223 Cal.App. 2d 434, 438-440

**WALTZ HAS AN ABSOLUTE RIGHT UNDER CALIFORNIA  
CIVIL CODE §§ 1712 & 1713 TO HAVE POSSESSION  
OF HER REAL PROPERTY RESTORED**

WALTZ'S FIRST CAUSE OF ACTION of her fourth amended complaint [Exhibit "A"] seeks restitution of possession of THE SUBJECT PROPERTY pursuant to Civil Code §§ 1712 and 1713.

California Civil Code § 1712 provides:

One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, *must* restore it to the person from whom it was thus obtained . . . [italics added for emphasis].

California Civil Code § 1713 provides:

The restoration required by the last section [Civil Code § 1712] *must be made* without demand . . . [italics added for emphasis].

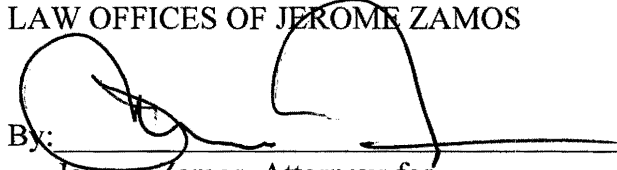
Under the mandatory provisions of Code of Civil Procedure §§ 1712 and 1713 AURORA and its agents [whose claims against THE SUBJECT PROPERTY are derived from "a void" deed of trust [Exhibit "M"]] has an absolute duty to restore possession of THE SUBJECT PROPERTY to WALTZ.

### CONCLUSION

WALTZ has the right to pursue her claims in THE PENDING STATE ACTION without any restriction or limitations on her right to recover title and possession based on the pendency of this Case because neither THE DEBTOR IN THIS CASE, or any subsidiary or affiliate of THE DEBTOR IN THIS CASE ever had a valid claim in THE SUBJECT PROPERTY.

Dated: Woodland Hills, California  
November 15, 2010

LAW OFFICES OF JEROME ZAMOS

By:   
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**PROOF OF SERVICE BY MAIL**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of LOS ANGELES, State of CALIFORNIA. I am over the age of 18 and not a party to the within action; my business address is 5228 Campo Road, Woodland Hills, California 91364-1927.

On November 15, 2010 I served the following document(s) described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PRUDENCE WALTZ'S MOTION PURSUANT TO SECTIONS 362(d)(2)(A) AND 554(b) OF THE BANKRUPTCY CODE REQUESTING RELIEF FROM STAY AND THE ENTRY OF AN ORDER DIRECTING DEBTOR IN POSSESSION AND ITS AFFILIATES ABANDON CLAIMS AGAINST THE REAL PROPERTY THAT IS THE SUBJECT MATTER OF THAT CERTAIN ACTION PENDING IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES AS ACTION BC 374163 on the interested parties by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid addressed to:

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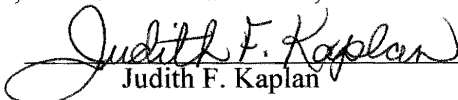
The Superior Court of The State of California  
For the County of Los Angeles  
Attention: The Hon. DEBRE K. WEINTRAUB  
111 North Hill Street  
Los Angeles, California 90012

I am "readily familiar" with the firms practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Woodland Hills, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in set forth in this affidavit.

I am employed in THE LAW OFFICES OF JEROME ZAMOS in Woodland Hills, California at whose direction service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed November 15, 2010 at Woodland Hills, California.

  
Judith F. Kaplan